



POLICE DEPARTMENT

March 27, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Thomas Nicoletti  
Tax Registry No. 925830  
Patrol Borough Bronx Task Force  
Disciplinary Case No. 2012-7593  
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The above-named member of the Department appeared before me on June 19, 2013, August 13, 2013 and October 22, 2013, charged with the following:

1. Said Police Officer Thomas Nicoletti, while assigned to the Patrol Borough Bronx Task Force, on or about September 6, 2011, while on duty, was unprepared at the Bronx Traffic Violations Bureau, to wit: while present to provide testimony on summonses said Police Officer issued, said Police Officer did not have copies of the summonses or his applicable Department issued memo book with him in court, resulting in the dismissal of three (3) cases.

P.G. 211-01, Page 2, Paragraph 11 DUTIES AND CONDUCT IN COURT

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeants Maria Lopez and Ramon Valdez as witnesses.

Sergeant Maria Lopez

Lopez, a 21-year member of the Department, is assigned to the Internal Affairs Bureau (IAB), Court Monitoring Unit (CMU). Lopez's duties at CMU include notifying IAB when a member of the service (MOS) is not prepared for [traffic] court. She explained that a MOS is unprepared for traffic court when the MOS goes to traffic court without a copy of the summonses the MOS issued to the driver. Unprepared for court also entails failing to bring the pertinent Activity Log and notes the MOS might have taken about the summons.

The hearing rooms are on the first floor and Lopez's office is on the second floor. Lopez has a live feed of the hearings via her computer and all the hearings are recorded. Any MOS whose case results in any disposition other than guilty, will be directed to a supervisor and the supervisor would then interview the MOS. The purpose of this process is to "avoid corruption and the throwing out of any cases."

Lopez testified that a MOS is required to bring a copy of the summons and their Activity Log with them to traffic court. The MOS has to include details regarding the driver's name, location, time, and vehicle information in their Activity Log.

Lopez testified that on September 6, 2011, Respondent was referred to her because he had "lost" during his summons hearing. Respondent told her that three out of twenty-four of his summonses were dismissed. Respondent told her that he did not bring

the police appearance listing (PAL). He was unable to obtain it from the roll call office at his command because the roll call office was closed. Respondent tried to obtain the PAL on September 5, 2011, Labor Day, a civilian holiday. The roll call office is typically manned by civilians. A PAL is a "listing of the cases that the officer has that day. It lists the officer's name, his command, tax number, the time he has to appear, and every motorist."

The PAL is generated in Lopez's command and copies are then sent out to the MOS's precinct. She stated that most precincts post the PAL on a bulletin board outside of the roll call office. Department's Exhibit (DX) 1 is a copy of the PAL, generated on August 17, 2011. DX 2 is Respondent's court slip from September 6, 2011. According to DX 2, Respondent was notified to appear at 2:30 pm and arrived at court at 2:23 pm. After Respondent testified, Lopez prepared a Traffic Violations Bureau Recap (TVBR). DX 3 is the TVBR.

Lopez said that she frequently saw Respondent at traffic court and that he was normally prepared. Respondent did not tell Lopez that he had gone to his precinct to retrieve the copies of the summonses. Respondent also did not tell Lopez whether he tried to look at the PAL before going to court.

On cross-examination Lopez agreed that Respondent was a "summons guy," or in other words, it was his "basic job" to write a lot of summonses. She agreed that Respondent could maybe write over a thousand summonses per year. She also agreed that this was the first time that she had to prepare a complaint against Respondent. On the following day, Lopez spoke to a Senior Police Administrative Aide (SPAA) who told Lopez that the PAL was not posted in the precinct because it was a civilian holiday on the

day before Respondent's scheduled court date. Lopez was aware that Respondent's command told him that, on the day he was scheduled for court, he was to report directly to court; he was not permitted to stop at his command before going to court. Lopez was also aware that Respondent was told that he would no longer accrue overtime for court preparation.

Lopez agreed that, according to DX 2, [REDACTED] [REDACTED] She indicated that on three of the summonses, summons numbers 012, 592 and 801, a disposition of "N1" was entered. She said "N1" is a code that is used when the motorist is found not guilty because there was not "clear and convincing evidence." Lopez said the code "D8," on the disposition means that the testifying officer did not have recollection of the incident. Lopez said she would make a notification to IAB if "D8" was the final disposition. She agreed that a disposition of "D8" is more serious than "N1."

Lopez said she heard a rumor that the PAL was not posted on the wall because "they had a problem with cats," and that the PAL was posted above the cat's litter box. Lopez agreed that IAB takes no affirmative steps to help police officers have their documentation before they testify so they can avoid being brought up on charges and specifications. Lopez stated that in the six months before this incident, she had notified IAB more than 5 but less than 50 times. Lopez said that if the respective precinct does not contact her office for the PAL, she would fax the PAL as a precaution. The PAL is generated about 20 or 21 days before the court date. Respondent's precinct had acknowledged that it had received the PAL.



Lopez acknowledged that Respondent had signed a notification to appear for court, but did not know if Respondent had also received a list of summonses.

Lopez said Respondent's partner was also unprepared for court for the same reason as Respondent.

Lopez testified that if an officer does not have his summons with him, he can ask the administrative law judge for the judge's copy so that he can testify from it, but the judge does not have to give the officer the copy. Some judges will give their copy of the summons to the officer and some will not, and in Bronx traffic court, the judges "very rare[ly]" allow officers to view their [judges'] copy of the summons.

A motorist who did not bring the summons to court can pick up a substitute ticket from the court. Lopez said an officer cannot testify based on the substitute ticket because it does not have the location, time or license plate number of the vehicle. Lopez maintained that an officer cannot win a case if he does not know the time, location, or direction of traffic. She said the pertinent information that an officer needs to testify is not on the substitute ticket or the PAL.

Lopez said, in her opinion, Respondent is a "great testifier. He is always prepared to come to court. I know him well, I have dealt with him many many times. ... I am sure he would have definitely try to avoid getting a notification to IAB."

On redirect examination, Lopez said Respondent did not tell her if he tried to find a copy of a substitute summons. Lopez said there is a message on the bottom of the PAL which reads, "please remind all police officers to bring their copy of the summons to the hearing." Lopez agreed that Patrol Guide section 211-01 lists a police officer's court duties. Lopez said that Respondent told her he was unable to obtain the PAL. This was

because he did not have access to the roll call room which was closed for Labor Day. She said Respondent did not tell her he could not obtain the PAL because of the cats. Lopez agreed that members do not accrue overtime to prepare for court because they can prepare during their tour of duty.

When questioned by the Court, Lopez stated that since the Bronx summons scandal “things have changed and they are directing them more to tell them this is what you need to bring, this is what you have to do.” Officers receive their notifications about 20 or 21 days before their court appearance and Lopez’s office provides manuals that aid officers in their court testimony.

On redirect examination, Lopez said that for the Respondent to have received overtime for court preparation was a “privilege” and that “[m]any commands don’t offer [overtime].” Lopez testified that officers have to be prepared for court. “[I]t depends how busy they are. I mean, if he is not on a job, he can come the same day and pull his summonses. Or in his case, he may have to wait until the day before or the day of.” She continued, “[S]ad to say is sometimes you may have to do that on your own time. We would like to only have to work, you know, eight hours or whatever, but sometimes our job goes over.”

Sergeant Ramon Valdez

Valdez, a 16-year member assigned to IAB, Traffic Violations Bureau (TVB), testified that on September 27, 2011, he started his investigation on Respondent. Valdez retrieved Respondent’s court notification from Respondent’s command’s roll call department. DX 4 is a two-page document that includes the TVB notification with

Respondent's signature, acknowledging its receipt, and the notification recap, which lists the date on which Respondent received the notification.

Valdez testified that during Respondent's official Department interview, Respondent told him he was unprepared for court on September 6, 2011, because he had returned from his vacation on September 5, 2011. Respondent was unable to retrieve a copy of his PAL because the roll call room was closed during a civilian holiday on September 5, 2011. Respondent had been notified for court on August 22, 2011.

Valdez said he is familiar with Respondent's command and that the PAL is usually posted on a bulletin board next to the roll call room. From Respondent's official Department interview, Valdez learned that Respondent goes to court "very frequently," and wrote "approximately a hundred summonses a month." Valdez testified that the Patrol Guide requires officers to bring their Activity Logs and other pertinent notes to court.

He said that when preparing for court, "all officers are different. Me per se, on the day I would be notified, I would retrieve the documents needed, put them aside, review them, and on the date I was scheduled to appear at court, I would bring them with me to court." Valdez did not recall if Respondent tried to consult with the PAL on the date he was notified to appear in court. Valdez said Respondent did not attempt to retrieve the PAL on the morning of his court appearance. Respondent indicated that he attempted to obtain the PAL on September 5, 2011.

When Valdez receives a notification that an officer was unprepared for traffic court, he begins his investigation by determining whether the officer appeared in court with the required documents, when he was notified, and whether he made any attempts to

actually testify. Valdez would listen to the audio from the court room testimony to determine whether the officer tried to testify. Valdez testified that if an officer was prepared with the required documentation and testified, but the case was dismissed, "It would be classified as a D6, which means that there was no prima facie based on the facts that were given on the date in question." Valdez agreed that he investigates whether officers are unprepared for court.

Valdez agreed that there is a penalty guideline system for officers whose summonses are dismissed. For instance, if a case is dismissed for one motorist, a penalty of "B3," loss of three vacation days, is implemented. If a case involving two motorists is dismissed, the penalty is the loss of five vacation days, and if a case involving three motorists is dismissed, the penalty is the loss of eight vacation days.

At the end of the investigation, Valdez concluded that Respondent had ample time to retrieve the "documents needed to respond to court." His "responding to court without the required documents and not being able to testify result[ed] in the cases being dismissed...." Specifically, three cases, involving three motorists were dismissed and a penalty of "B8," eight vacation days was implemented.

On cross-examination, Valdez said he conducted Respondent's official Department interview on January 5, 2012. Valdez did not know that Respondent had missed a court appearance, resulting in a dismissal of a number of summonses, on January 5, 2012 as a result of this interview. Valdez did not recall when Respondent received the court notification. Valdez also conducted a similar investigation on Respondent's partner who received a schedule "B" command discipline. After counsel refreshed Valdez's memory, Valdez said Respondent received a penalty of code "N1."



Valdez did not know where the PAL was posted on September 5, 2011. He also did not recall the last time he was in Respondent's command both before and after September 5, 2011.

On redirect examination, Valdez said that Respondent admitted that he was notified for traffic court. Although he was able to retrieve an audio copy of Respondent's traffic court testimony, Valdez said, "I was unable to gain a good, clear disc of the actual audio recording of the TVB testimony...so I was unable to distinguish what he was saying." Respondent did not tell Valdez whether Respondent consulted his court materials before September 6, 2011.

On recross-examination Valdez agreed that one of the motorists plead guilty. Valdez did not speak with the administrative judge regarding the dismissal of the other summonses because "it's not standard procedure for us to speak to judges in regards to whether or not they want to grant an adjournment"

#### Respondent's Case

Respondent called Sergeant John White and testified on his own behalf.

#### Sergeant John White

White, a 24-year member of the Department, testified that on September 5, 2011, Respondent asked him for access to the roll call room because Respondent needed information "on some cases that he had the next day." He said Respondent would not be able to obtain the summons numbers and the case information from anywhere other than the roll call room. White testified that the roll call room was locked because it was Labor

Day and that he did not have the key to the office. Out of the three people who may have access to the room, the Integrity Control Officer (ICO), administrative lieutenant and the commanding officer, none were present in the command at the time.

White was not sure if Respondent could access the summons information from a computer terminal, but even if such information was accessible, White did not have the credentials to log in. He testified that on September 5, 2011, the PAL was not posted outside of the roll call room.

On cross-examination, White said Respondent must have asked him to access the roll call room at some time after 5:13 p.m. Although White worked on September 6, 2011, he was assigned to training and was in the precinct briefly and therefore he did not recall if the roll call room was open. White testified he did not know where the uniformed members of the service who are assigned to the roll call room were on September 5, 2011. He did not know if the ICO, administrative lieutenant or the commanding officer worked on September 5, 2011.

White explained that he prepared for court by reviewing his notes and Activity Log entries. His notification would indicate the date of the summons and the case number. White worked on the midnight tour and he would mostly get his notification on the day before his court date. He said the roll call room would be open Monday through Friday to make the necessary court notifications.

On redirect examination, he agreed that the roll call room closed at about 4:00 p.m. on Friday September 2, 2011.

When examined by the Court, White said that, on the days when he was notified for court on the day before his court date, he would start his tour and then request to be put on administrative duty while he reviewed his documents.

Respondent

Respondent, a 14-year member of the Department, testified that he is assigned as the Traffic Enforcement Officer (TEO). During his eight years as a TEO, he has written about 8,000 or 9,000 summonses and testifies about twice a week. Respondent testified that he was notified for the first time to appear in court on September 2, 2011 at 8:35 pm. On Friday September 2, 2011, Respondent worked from 12:00 pm to 8:35 pm, earlier than his scheduled tour of duty because "I can't recall exactly why. It was probably to address some certain traffic condition on the roadways."

When Respondent went to sign out on the roll call on September 2, 2011, "taped to the desk at that point right next to the roll call was a notification for traffic court the following Tuesday." The notification "would give the first name of my first motorist and then it would give a number. For example, plus 25 if I had 25 motorists." Respondent said he probably had about 25 or 30 summonses on that day. On Saturday September 3, 2011, Respondent's regular day off, Respondent received a phone call from Lieutenant Ruffino who told him that he "was no longer authorized for overtime prior to traffic court, and I was no longer authorized to go to the precinct before court. I had to go straight to court in civilian attire."

Respondent testified that before September 2, 2011, he would "come to the precinct just before traffic court to get in uniform and get a marked police car, I would

gather my summonses for that day's court, and I would go over to court." He kept his summonses in his locker at his precinct. For the eight years Respondent was assigned to the command, he was allotted two hours of overtime to prepare for court. Respondent said Ruffino gave no reason for taking away Respondent's overtime and Ruffino "just told me I wasn't authorized to come to the precinct ahead of time." Respondent informed Ruffino that he had to go to court for about 20 summonses and he did not know the case numbers.

Respondent testified that the PAL is usually posted in a glass case in the muster room located on the first floor, however, the PAL for September 6, 2011 was not posted. Respondent later learned that "roll call was no longer posting [the PAL] down there because we had a cat problem in the precinct, and the cat food and the litter boxes were kept right underneath the [PAL], and the roll call personnel no longer wanted to deal with it." On September 5, 2011, Respondent tried to ascertain what summonses he had to testify for but did not have access to the PAL as it was inside of the locked roll call room. He said none of the supervisors who had access to the roll call room were working that day.

On September 6, 2011, Respondent was scheduled to work from 4:00 p.m. to 12:35 a.m., but started at 2:30 p.m. because he had to appear for court. Respondent said, "I don't recall if I took the overtime at that point, but I would be allowed overtime from the time I punched in to the beginning of my 1600 tour."

At traffic court, Respondent told Lopez that he was unable to retrieve his case information from the PAL. Lopez informed him that he should request as many adjournments as possible. He recalled that Lopez called his command to find out about

the PAL. Out of the 20 cases, 17 were adjourned and Respondent did not testify on the remaining 3.

Respondent testified that after this incident, a new glass case was put outside of the roll call room which displayed the PAL. Additionally, he said "all your summons listings" are stapled to the court notification.

On cross-examination, Respondent denied that he was notified on August 22, 2011. Respondent maintained that he was notified on September 2, 2011, at 8:35 p.m. He did not make an attempt to retrieve the summonses at that point because he was on his way home. Respondent agreed that he had stayed past his scheduled tour on many occasions but had submitted overtime reports for the extra time. Respondent denied that during his official Department interview he told the investigator that on, September 5, 2011, he did not come to work early to retrieve his summonses.

Respondent maintained that Ruffino told him that "I could not come to [the precinct] prior to court, I would have to go straight from my home to traffic court on that day."

On Monday September 5, 2011, Respondent said he arrived to his command about 10 or 15 minutes earlier than his scheduled tour. Respondent and White spent "quite sometime" trying to open the roll call room. White made several phone calls and Respondent even called the Emergency Service Unit to have the door removed. Respondent was on his regular day off on September 3 and 4. Respondent agreed that some of the dates that he was notified for court fell around "big" holidays. Respondent did not call his command to obtain the summons information on his days off.

Respondent also did not call the TVB to obtain the summons information at anytime after he was notified.

Respondent said that he told Ruffino that he was unprepared for court and Ruffino told him to "do what I had to do." Respondent believed that since he was told not to come to his precinct before court, he would have been in serious trouble if he actually had come to the precinct. Respondent disagreed that Ruffino told him that he could come to the precinct before court but that he would not receive overtime for it.

Respondent believed he did not tell the investigators during his official Department interview that Ruffino told him that he could not go to his command prior to his court appearance. Respondent said he informed his commanding officer, Captain Benjamin, that Ruffino told him he could not come to the precinct before his court appearance.

On redirect examination, Respondent said that after he informed Benjamin, Benjamin authorized Respondent two hours of overtime to prepare for court. By the time Respondent was interviewed about the incident, the issue had already been resolved.

On recross-examination, Respondent said he did not always prepare for court while on overtime. "If I had time while I was working on the previous day, I would take some time. If I had time off patrol, I would."

On redirect examination, Respondent's Exhibit (RX) A is a copy of the roll call diary from April 18, 2011 to October 10, 2011. Respondent said that in August, 2011, Ruffino informed Respondent that "there was no more time--overtime authorized for pretrial preparation for traffic court." Respondent believed that this meant he had to go straight to traffic court "under my own means." His tour would start when he arrived at



traffic court. Respondent testified that the purpose of RX A is to keep a record of when officers are notified for their court appearance. According to page four of RX A, Respondent was notified on August 18, 2011. However on August 18, 2011, Respondent said he was vacationing in Maine and returned to work on Monday August 22, 2011.

He agreed that between August 22, 2011, and September 2, 2011, he had appeared in traffic court.

On recross-examination, Respondent agreed that Ruffino told him that he could not come to the precinct on his own time to prepare for court.

#### The Department's Rebuttal Case

The Department called Lieutenant Steven Ruffino in rebuttal.

#### Lieutenant Steven Ruffino

Ruffino, a 30-year member of the Department has been a lieutenant for 11 years. He has worked with the Bronx Task Force for almost five years. His duties as the integrity control officer include monitoring the integrity within the command, advising the commanding officer on certain penalties "and other matters," and monitoring the overtime within the command.

He was also a sergeant in Highway Patrol for 11 years where he supervised members on patrol. As an officer in the Highway Patrol, he "wrote numerous summonses every month;" also, as a sergeant, he would sometimes write summonses. He would go to Manhattan traffic court and the Bronx traffic court to testify on these summons cases "[s]ometimes weekly, sometimes once every two weeks." He would

receive and "sign for" notifications for court from the roll call office. When asked how he would prepare for his court cases, he testified, "I would come in on my own time and pull my cases for that day or I would do it the night before." He never received any overtime for this preparation.

Ruffino reviewed overtime practices for three summons officers at the task force from January 2011 through December 2011. He learned that two of the three officers, Respondent and Officer Rodriguez were receiving overtime to prepare for their traffic cases. Ruffino did not think it was right because, he explained, "I had never heard about it being done anywhere before."

He told the officers that they could not continue on overtime to pull their cases for court. "Specifically, I think I told [Respondent] that it wasn't right to do and that it wasn't going to continue."

When asked if he ever indicated to Officer Nicoletti that he could not come in to the command at all before his court tour, Ruffino replied, "No." Ruffino explained, "I told him that I didn't want him coming in to the stationhouse on overtime to prepare for traffic court but I didn't tell him that he couldn't come in on his own time. . . .I believe, unless he was on suspension, I would not have that authority and I would have no reason to prevent anybody from coming into the stationhouse or leaving."

Ruffino testified, "The roll call diary is kept in the clerical office in the roll call, and each page is a different day of the calendar and it indicates who has court for that day, who has training, who has a vacation day, a chart day, who's out sick and information like that." The roll call diary indicates when a member of service is notified for court: "Usually next to their name will be the initials NF standing for notified. . . .

The date is . . . to the right of where the initials NF are.” Ruffino thought the roll call diary was “pretty accurate.”

Ruffino was familiar with Respondent’s court tours in September 2011. Ruffino indicated that if Respondent was unable to pull his cases before the September 6, 2011 court date, he would have been able to come in to the command on his own time to pull the cases the morning of court. He just would not have been able to incur overtime for pulling those cases the morning of court.

On cross-examination, Ruffino agreed that Officer Wall, was working the tour starting at 9:30 a.m. Ruffino did not necessarily agree that because Respondent’s tour normally starts at 4:30 p.m. that he would never be able to prepare for any of the court times unless he came in on his own time or came in and received pre-tour overtime.

Ruffino explained, “[H]e could choose to come in at that time or he could pull his cases during his meal period, he could pull his cases after work. . . If he wanted to, he could do it the day before. But as far as the day of, he could do it at any time.”

Ruffino was not sure whether the Patrol Guide states that an MOS can not get pre-court overtime. He agreed that Respondent still writes tickets, goes to court on an almost weekly basis and he receives pre-court overtime.

Ruffino understood that the commanding officer allowed overtime, but as the integrity control officer, Ruffino felt that it was not the correct thing to do. He acknowledged that shortly after this incident in September 2011 with Respondent, the commanding officer went back to allowing Respondent and other officers to receive pre-court overtime.

Ruffino could not tell by looking at RX A whether Respondent was notified about his September 6 court date on August 18<sup>th</sup>. He also agreed that DX 4 did not indicate the date that Respondent was notified.

Ruffino acknowledged that the roll call office could have been locked on Labor Day. He agreed that there would be no way for the officer on that day to see who he had to go to court with or what tickets he had to bring. He did not know whether there were supervisors working that day who may have had access to the room.

Ruffino explained, “[W]hat I told him was that he could choose to go straight to court if he wishes which is what other officers do, they will go straight from home to court; or he could come in, suit up into his uniform and that usually -- which is what he usually does, and take a Department car to traffic court.”

On redirect examination, Ruffino agreed that members of the service generally come in on their own time to prepare for their Department duties.

Ruffino agreed that the last page on RX A indicated that Respondent was notified to go to court on August 18<sup>th</sup>. But even if Respondent was not notified until September 2, 2011, Ruffino asserted that Respondent “could have come in on the . . . day of his court (sic) to pull the cases.”

Ruffino had the impression that Respondent and his partner “seemed to have gotten their work done pretty quickly, a couple of hours maybe and the rest of the time, on occasion, was their own.”

On recross-examination, Ruffino testified, “I told him he could come in on his own time if he wanted to pull his cases. If he wanted to pull his cases while he was working, on his meal period, or when he was finished with the work that he had to do,

that he had some time in the stationhouse, interrupted patrol time in the stationhouse, he could do it then, also.”

### FINDINGS AND ANALYSIS

Specification No. 1 states that while assigned to the Patrol Borough Bronx Task Force, on September 6, 2011, Respondent while on duty to provide testimony on summonses, did not have copies of the summonses or his memo book with him in court, resulting in the dismissal of three cases.

Respondent was unable to retrieve the listing for the summonses he needed for his testimony in court on September 6, 2011. Because Respondent was unprepared to testify on about 25 to 30 cases, most of them were adjourned and three cases were dismissed. Respondent argued that he was not given adequate notice to prepare for court, that he was locked out of the room where the list of summonses were kept, and that Lieutenant Ruffino's order prevented Respondent from going to the precinct to pick up the Police Appearance Listing (PAL) before court.

Respondent testified that he first learned about his court appearance for September 6, 2011 on Friday, September 2, at 8:35 p.m. as he was finishing his tour. The next day, Lieutenant Steven Ruffino, an integrity control officer, called Respondent at home. Respondent maintained Ruffino said that Respondent was “no longer authorized for overtime prior to traffic court and no longer authorized to go to the precinct before court,” but “had to go straight to court in civilian attire.”

Respondent came to work at the precinct on September 5, 2011, which was a Monday and Labor Day. However, because the room was locked he was unable to get

into the office to retrieve the PAL. This meant he did not have the list of summonses which he needed to prepare for court.

Respondent's attorney argued that police officers cannot be ordered to work without compensation. However, there was no testimony by either Respondent or Ruffino that Ruffino was ordering Respondent to work without compensation.

Lieutenant Ruffino testified that he never prohibited Respondent from going to the precinct before court. Ruffino told Respondent that he was prohibited from getting overtime for pre-court preparation. When Respondent asked how he would now prepare, Ruffino described how:

[H]e could come in on his own time,....pull his cases while he was working, on his meal period, or "when he was finished with the work he had to do . . . go straight from home to court, or he could come in, suit up into his uniform . . . which is what he usually does, and take a Department car to traffic court.

This court does not endorse the advice to Respondent to use his personal time for work. However, Ruffino's intention was to describe various options to prepare without accruing overtime.

On the day before court, which was the Labor Day Monday, when Respondent realized that he was unable to retrieve the necessary papers, he knew he had a problem. As a summons officer, Respondent was experienced in appearing in court. He knew, as every police officer who testifies in court knows, that a member of service cannot go to traffic court unprepared. He also knew that the lieutenant had never ordered him to work without compensation.

Assuming Respondent genuinely believed that the lieutenant's order literally prevented him from going to the precinct before going to court, then Respondent knew he was in a position of conflicting orders. Respondent then had an affirmative duty to take



extra steps to ensure that he would be prepared. He should have contacted either the lieutenant or his supervisor to figure out what to do. He also had the whole morning before going to court at 2:30 p.m. to contact a superior for further direction or to call his command and ask someone to pull the PAL and send him the paperwork he needed.

Instead of taking any steps to ensure he would be prepared for over 25 cases or advising a superior in time to allow him to prepare, he went to court. Knowing that the whole reason for his court attendance had been jeopardized, he spent the day there and may even have received overtime that the Department allows for court appearances.<sup>1</sup> Respondent could have taken the steps to ensure that he had the summonses needed.

Accordingly, Respondent is found Guilty of Specification No. 1.

#### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on March 1, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Sergeant Valdez, the IAB investigator from the Traffic Violations Bureau, testified that under the Department's guidelines, a case which is dismissed and involves one motorist would warrant a penalty of three vacation days. For two motorists, the penalty would be five vacation days and for three motorists, eight days. If the case involved four or more motorists, the member would be served charges and specifications.

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<sup>1</sup> Respondent's arrival at court was an hour and half before his normal tour of duty. He testified, "I don't recall if I took overtime at that point, but I would be allowed overtime from the time I punched in to the beginning of my 1600 tour."

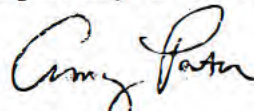
Consistent with the Department guidelines, Officer Robert Rodriguez, Respondent's partner, received a schedule B command discipline and the loss of three days for the dismissal of six separate tickets. Because Respondent lost three cases involving three different motorists, Respondent was offered a schedule B command discipline with eight vacation days. Respondent declined to accept the penalty and opted to go to trial.

The Advocate recommended a penalty of eight vacation days, the same penalty he would have received if he had accepted the command discipline; thus, Respondent would not be penalized for exercising his right to trial.

While Respondent could have taken steps to ensure that he had the summonses he needed, the orders he had just recently received conflicted with the customs of his precinct. His own captain maintained the practice of giving overtime to Respondent after this incident. Having been locked out of the office on Labor Day in conjunction with being in a position between conflicting orders mitigates Respondent's guilt. Finally, Respondent's exemplary record as a summons officer is considered.

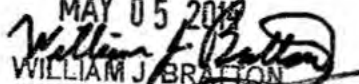
Therefore, it is recommended that Respondent forfeit five vacation days.

Respectfully submitted,



Amy J. Porter  
Assistant Deputy Commissioner - Trials

**APPROVED**

MAY 05 2018  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER THOMAS NICOLETTI  
TAX REGISTRY NO. 925830  
DISCIPLINARY CASE NO. 2012-7593

In 2013 and 2011, Respondent received ratings of 4.5 "Highly Competent/Extremely Competent" on his annual performance evaluations. In 2012 he received a rating of 4.0 "Highly Competent." Respondent has two medals for excellent police duty.

[REDACTED]  
[REDACTED] In 2010 he was designated Chronic Sick A. In 2011 and 2010 he was designated Chronic Sick B.

Respondent has no prior formal disciplinary record.

For your consideration.



Amy J. Porter  
Assistant Deputy Commissioner – Trials